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May 2, 2012

The Honorable Kiyo A. Matsumoto
United States District Court
Eastern District of New York
225 Cadman Plaza East, Room N406
Brooklyn, NY 11201

Re: Boda v. Detective Phelan, New York City, B.M. (Index No. 11-cv-28)

Dear Judge Matsumoto:

We represent Defendant B.M. in the above-captioned matter. Pursuant to Your Honor's rules and Judge Gold's April 10, 2012 Minute Entry, we write to request a pre-motion conference to discuss Defendant B.M.'s intent to file a Fed. R. Civ. Pro. 56 Motion for Summary Judgment ("Motion") in the event her Rule 12 Motion, which is pending before this Court, is denied in whole or in part.

To the extent that any of Plaintiff Peter Boda's ("Plaintiff") claims against Defendant B.M. remain after the Court's decision on the pending motion, Defendant B.M. will seek summary judgment on all of Plaintiff's remaining claims against her on the following grounds:

- Plaintiff's malicious prosecution claim against Defendant B.M. fails because, *inter alia*: (1) the criminal prosecution against Plaintiff was not initiated by Defendant B.M.; and (2) there was probable cause for Plaintiff's arrest, detention, and prosecution.
- Plaintiff's defamation claim against Defendant B.M. fails because, *inter alia*: (1) Defendant B.M. did not make the allegedly defamatory statement; and, even assuming, *arguendo*, that Defendant did make the allegedly defamatory statement, (2) Defendant B.M. acted without malice (*i.e.*, with a good faith belief in the truth of her alleged statements to the police and district attorney); and (3) the allegedly defamatory statement is protected by qualified privilege.

Additionally, Defendant reserves the right to seek costs, attorneys' fees, and sanctions pursuant to Rule 11 and/or 28 U.S.C. § 1927.

Defendant B.M. proposes that the briefing schedule be set after a decision is reached on her pending Rule 12 motion, and after the deposition of Defendant's minor daughter, H.B., has been taken. That deposition has yet to be noticed or scheduled. Pursuant to Judge Gold's April 13, 2012 Order, counsel for H.B. and the parties to this action are to confer and submit a written report with respect to the terms and circumstances of that deposition by May 11, 2012.

Respectfully submitted,

/s/ Nicole E. Jacoby

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cc: Judge Steven M. Gold
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